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In The

Supreme Court of the United States

October Term, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,

Petitioner,

v.

WILLARD WEEMS AND JULIA WEEMS,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Alabama

BRIEF AMICI CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS, THE ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS, AND THE ERISA INDUSTRY COMMITTEE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICI CURIAE ... 1

ARGUMENT 4

The Petition Should be Granted to Eliminate the Real and Potential Conflicts in Substantive Law under ERISA Created by the Decision of the Alabama Supreme Court 4

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) 4, 11, 12

Blue Cross and Blue Shield of Alabama v. Lewis, 753 F. Supp. 345 (N.D. Ala. 1990) 9

Curtiss-Wright Corp. v. Schoonejongen, 115 S. Ct. 1223 (1995) 1

District of Columbia v. The Greater Washington Bd. of Trade, 113 S. Ct. 580 (1992) 1

FMC Corp. v. Holliday, 498 U.S. 52 (1990) 1, 6, 7

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987) 11

Harsch v. Eisenberg, 956 F.2d 651 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992) 9

Haywood v. Russell Corp., 584 So. 2d 1291 (Ala. 1991) 13

Ingersoll-Rand v. McClendon, 498 U.S. 133 (1990) 1, 4, 7, 8, 9, 10

Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399 (1988) 8

Livadas v. Bradshaw, 114 S. Ct. 2068 (1994) 2

Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134 (1985) 6, 9, 11

McClendon v. Ingersoll-Rand Co., 779 S.W.2d 69 (Tex. 1989) 8

McDonald v. Artcraft Elec. Supply Co., 774 F. Supp. 29 (D.D.C. 1991) 9

McRae v. Seafarers' Welfare Plan, 920 F.2d 819 (11th Cir. 1991) 10

TABLE OF AUTHORITIES – Continued

Page

Mertens v. Hewitt Assoc., 113 S. Ct. 2063 (1993) . . . 10, 11

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985) 6

National Posters, Inc. v. NLRB, 494 U.S. 1026 (1990) 2

New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995) 4

Patterson v. Shumate, 113 S. Ct. 13 (1992) 1

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987) 10

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983) . . . 11, 13

Spinelli v. Gaughan, 12 F.3d 853 (9th Cir. 1993) 10

UAW v. Midland Steel Prods. Co., 771 F. Supp. 860 (N.D. Ohio 1991) 9

Varity Corp. v. Howe, 115 S. Ct. 1792 (1995) 1

Willmar Elec. Service, Inc. v. NLRB, 113 U.S. 1252 (1993) 2

STATUTES

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*:

Section 409, 29 U.S.C. § 1109 . . . . . 5, 6, 9

Section 502(a), 29 U.S.C. § 1132(a) 6, 8, 9, 13

Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) 6

Section 502(a)(2), 29 U.S.C. § 1132(a)(2) 6

Section 502(a)(3), 29 U.S.C. § 1132(a)(3) 6, 10

TABLE OF AUTHORITIES – Continued

Page

Section 502(e), 29 U.S.C. § 1132(e) 6

Section 510, 29 U.S.C. § 1140 ..... 5, 6, 8

Section 514(a), 29 U.S.C. § 1144(a) 5

LEGISLATIVE HISTORY

S. Rep. No. 127, 93d Cong., 1st Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838 11

H.R. Conf. Rep. No. 1280 (1974) 6

102 Cong. Rec. S15,762 (daily ed. Aug. 22, 1974) 12

120 Cong. Rec. 29197 (1974) 5, 13

120 Cong. Rec. 29209 (1974) 11

120 Cong. Rec. 29928 (1974) 12

120 Cong. Rec. 29933 (1974) 5, 10

120 Cong. Rec. 29942 (1974) 5

OTHER

Denise Clemow and Lisa Lattan, *ERISA Section 510 Claims: No Right to a Jury Trial Can Be Found*, 73 Neb. L. Rev. 756 (1994)..... 9

Richard Rouco, *Available Remedies Under ERISA Section 502(a)*, 45 Ala. L. Rev. 631, 645-46 (1994) 7

STATEMENT OF INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the largest federation of business companies and associations in the world. With substantial membership in each of the 50 states, the Chamber represents nearly 215,000 businesses and professional organizations and serves as the principal voice of the American business community. Over 6500 of those members are located in Alabama, and many more do business in Alabama.

An important function of the Chamber is to represent the interests of its members in important matters before this Court, the lower courts, the United States Congress, the Executive Branch, and independent regulatory agencies of the federal government. The Chamber has sought to advance those interests in this Court by filing briefs *amicus curiae* in cases of importance to the business community.[2]

The National Association of Manufacturers ("the NAM") is the nation's oldest and largest broad-based industrial trade association. Its nearly 13,500 member companies and their subsidiaries employ approximately

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[1] This brief is being filed with the written consent of the parties pursuant to Rule 37.2. Letters of consent are being filed simultaneously with the Clerk of the Court.

[2] *See, e.g., Varity Corp. v. Howe*, 115 S. Ct. 1792 (1995); *Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223 (1995); *District of Columbia v. The Greater Washington Bd. of Trade*, 113 S. Ct. 580 (1992); *Patterson v. Shumate*, 113 S. Ct. 13 (1992); *Ingersoll-Rand v. McClendon*, 498 U.S. 133 (1990); *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

85% of all manufacturing workers and produce over 80% of the nation's manufactured goods. More than 158,000 additional businesses are affiliated with the NAM through its Associations Council and National Industrial Council. Like the Chamber, the NAM seeks to further the interests of its members by, *inter alia*, filing briefs *amicus curiae* in this Court.[3]

The Association of Private Pension and Welfare Plans ("the APPWP") is a broad-based, non-profit trade association founded in 1967 to protect and foster the growth of the Nation's private employer-sponsored employee benefit plan system. The members of the APPWP include both small and large employer sponsors (including many Fortune 500 companies) of employee benefits plans, as well as numerous plan support organizations, such as consulting and actuarial firms, investment firms, banks, insurers and other professional benefit organizations. This broad-based membership provides the APPWP with substantial expertise and experience in the entire spectrum of issues relating to all types of benefit plans.

The ERISA Industry Committee ("ERIC") is a non-profit association committed to the advancement of employee retirement, health, and welfare benefit plans of the Nation's largest employers. All of ERIC's members do business in more than one state, and many have employees in all fifty states. The association has a strong interest in matters affecting its members' ability to deliver benefits, their cost and effectiveness, as well as

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[3] *See, e.g., Livadas v. Bradshaw*, 114 S. Ct. 2068 (1994); *Willmar Elec. Service, Inc. v. NLRB*, 113 U.S. 1252 (1993); *National Posters, Inc. v. NLRB*, 494 U.S. 1026 (1990).

the role of those benefits in the Nation's economy. Both ERIC and APPWP have filed *amicus curiae* briefs in numerous cases involving important issues for the employee benefit plan community.

Members of the Chamber, the NAM, the APPWP and ERIC have a vital interest in the proper interpretation and application of the Employee Retirement Income Security Act of 1974 ("ERISA"), because they collectively sponsor hundreds of thousands of employee pension and welfare benefit plans covered by ERISA. In particular, they have a substantial interest in ensuring that the statute is interpreted and applied in a uniform and consistent manner across the nation, because many of these plans cover participants and beneficiaries in multiple states.

The decision below, which holds that state courts may establish federal common law under ERISA, and holds further, contrary to the vast majority of federal courts, that ERISA authorizes extracontractual damages and jury trials, could result in varied interpretations of ERISA and inconsistent decisions thereunder. This is of enormous concern to the companies who sponsor employee benefit plans. Indeed, it is of particular concern to the thousands of Chamber, NAM, APPWP and ERIC members in Alabama, the many other members who sponsor plans covering participants in Alabama, and the members who are providing fiduciary services to plans in Alabama, all of whom may now be subject to different obligations and remedies under ERISA, depending on whether they are sued in state or federal court.

ARGUMENT

The Petition Should be Granted to Eliminate the Real and Potential Conflicts in Substantive Law under ERISA Created by the Decision of the Alabama Supreme Court

Just last term, the Court reiterated "Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern.' " *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677 (1995) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). As the Court explained:

> Congress intended "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction."

Id. (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 141 (1990)).

Completely disregarding these principles, the Alabama Supreme Court held that state courts may establish federal common law under ERISA, even if the law they establish is inconsistent with the law established by the federal courts. Pet. App. 16a.[4] The court further held that

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[4] References to "Pet. App." are to pages in the appendix to the Petition.

extracontractual damages and jury trials are available in actions alleging violations of ERISA §§ 409 and 510, 29 U.S.C. §§ 1109 and 1140, contrary to most of the federal courts that have addressed these issues. *Id.* at 17a, 19a. If allowed to stand, this decision will have significant adverse implications for Alabama plan sponsors and fiduciaries, who may be subject to different obligations and remedies depending on whether they are sued in state or federal court. The decision is, moreover, of concern to all plan sponsors and fiduciaries; if the Alabama courts are permitted to establish their own federal common law under ERISA, the courts of other states may well follow suit. Such a result would wholly undermine the intent of Congress as expressed in both ERISA and its legislative history.

According to one of its sponsors, ERISA's "crowning achievement" was the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans." 120 Cong. Rec. 29197 (1974) (statement of Representative Dent). Other sponsors echoed these sentiments. 120 Cong. Rec. 29933, 29942 (1974) (statements of Senators Williams and Javits). But one need not rely on the legislative history to ascertain Congress's intent in this regard; it is abundantly clear from ERISA itself, particularly its preemption and enforcement provisions.

In section 514 of ERISA, Congress provided, with certain narrow exceptions, that the provisions of Titles I and IV of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . . " ERISA § 514(a), 29 U.S.C. § 1144(a). As this Court has said, "[t]he pre-emption

clause is conspicuous for its breadth." *FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990). It "displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985).

Congress's intent in this regard is also apparent from ERISA's "carefully integrated" civil enforcement provisions,[5] which provide for exclusive federal jurisdiction over all actions arising under Title I of ERISA. ERISA § 502(e), 29 U.S.C. § 1132(e). The only exception is for actions by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). State courts have concurrent jurisdiction over actions under this subsection. ERISA § 502(e), 29 U.S.C. § 1132(e). Significantly, each of the actions described in subsection 502(a)(1)(B) is an action that can be resolved by reference to plan terms; these actions are permitted to be brought in state courts of competent jurisdiction because these actions "do not involve application of the title I provisions." H.R. Conf. Rep. No. 1280, 327 (1974).[6]

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[5] *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985).

[6] The language of sections 502(a) and (e) makes clear that the court below lacked jurisdiction over the Weems's action, which seeks damages for alleged violations of ERISA §§ 409 and 510, 29 U.S.C. §§ 1109 and 1140. Subsections 502(a)(2) and (3) are the enforcement mechanisms for violations of sections 409 and 510, but state courts have concurrent jurisdiction only for actions under subsection 502(a)(1)(B). *See* Petition at 9-11.

By granting jurisdiction solely to federal courts over actions involving the interpretation and application of the statute, Congress made clear its intent that all regulation of employee benefit plans was to take place in the federal sphere. As one commentator aptly put it:

> The relevance of the exclusive jurisdiction provision becomes apparent when coupled with section 514(a)'s expansive preemption provision. Together, the provisions display a clear statutory scheme constructed for the purpose of "federalizing" the law governing employee benefit plans.

Richard Rouco, *Available Remedies Under ERISA Section 502(a)*, 45 Ala. L. Rev. 631, 645-46 (1994). In fact, "Congress's expressed intent that federal courts develop a federal common law to aid interpretation of ERISA suggests a corollary congressional intent to establish complete federal occupation in the area of employee benefits." *Id.* at 646 (footnote omitted).

As the Court explained in *Ingersoll-Rand*, which involved application of ERISA's preemption clause, allowing both state and federal law to govern employee benefit plans would be unworkable:

> Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct. . . . Such an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement.

498 U.S. at 142.

The decision below creates precisely the "potential for conflict in substantive law" identified by the Court in *Ingersoll-Rand*. After erroneously holding that state courts have the authority to create federal common law under ERISA, the Alabama Supreme Court compounded its error by reaching a conclusion that is wholly inconsistent with the views of most of the federal courts, including the Court of Appeals for the Eleventh Circuit, within which the Alabama court sits. And ironically, the lower court reached this result by purporting to interpret a passage from *Ingersoll-Rand*.

In *Ingersoll-Rand*, the issue before the Court was whether ERISA preempted a participant's claim under Texas law that his employer discharged him to avoid contributing to his pension fund. 498 U.S. at 135-36. Noting that the Texas cause of action "purports to provide a remedy for the violation of a right expressly guaranteed by § 510 and exclusively enforced by § 502(a)," the Court held that " 'due regard for the federal enactment requires that state jurisdiction must yield.' " *Id.* at 145 (quoting *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409 n.8 (1988)).

Because the plaintiff in *Ingersoll-Rand* was seeking compensatory and punitive damages rather than lost pension benefits, the Texas Supreme Court had concluded the action was not within ERISA's purview. *Id.* at 136 (citing *McClendon v. Ingersoll-Rand Co.*, 779 S.W.2d 69, 71 (Tex. 1989)). At the conclusion of her opinion for the majority, Justice O'Connor responded to this point. After noting that "there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek 'pension benefits,' " she added, in a sentence that the court below

misconstrued, "[i]t is clear that the relief requested here is well within the power of federal courts to provide." *Id.* at 145.[7]

A few courts, like the court below, have interpreted this passage to mean that compensatory and punitive damages are available to participant-plaintiffs under ERISA § 502(a), and that, accordingly, trial by jury is also available under that provision. *See, e.g., McDonald v. Artcraft Elec. Supply Co.*, 774 F. Supp. 29, 33-34 (D.D.C. 1991); *UAW v. Midland Steel Prods. Co.*, 771 F. Supp. 860, 863-64 (N.D. Ohio 1991); *Blue Cross and Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345, 346 (N.D. Ala. 1990). A large majority of the federal courts have rejected that interpretation, however, refusing "to believe that the Court intended to overrule settled law in most of the circuits, as well as narrowly limit – if not overrule – its own decision in [*Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985)] in such an off-hand manner." *Harsch v. Eisenberg*, 956 F.2d 651, 660 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992). *See also id.* at 657-60 (collecting cases); Denise Clemow and Lisa Lattan, *ERISA Section 510 Claims: No Right to a Jury Trial Can Be Found*, 73 Neb. L. Rev. 756, 777-78 nn.169, 170 (1994) (collecting cases).

In *Russell*, of course, the Court held that a participant may not recover extracontractual damages under ERISA § 409 for a breach of fiduciary duty. 473 U.S. at 142. And while the Court expressly reserved judgment in *Russell* as to the availability of extracontractual damages under

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[7] Thus, for example, a court can order various types of equitable relief, including, on facts like those in *Ingersoll-Rand*, reinstatement and/or restitution.

ERISA § 502(a)(3), *id.* at 139 n.5, the question was resolved in *Mertens v. Hewitt Assoc.*, 113 S. Ct. 2063 (1993), which held that only traditional equitable relief is available under ERISA § 502(a)(3). *See Spinelli v. Gaughan*, 12 F.3d 853, 857 n.3 (9th Cir. 1993) (language in *Ingersoll-Rand* which "could possibly have been read as allowing federal courts to award compensatory and punitive damages under section 502(a)(3)" must be deemed "superseded by *Mertens*").

The court below nevertheless concluded that extra-contractual damages and jury trials are authorized under ERISA, and that it was free to disregard the contrary views of the federal courts, including the Court of Appeals for the Eleventh Circuit. *See, e.g., McRae v. Seafarers' Welfare Plan*, 920 F.2d 819, 820 (11th Cir. 1991) ("[t]he weight of authority in both the Eleventh Circuit and other courts indicates that extra-contractual damages are not available as a form of relief under ERISA § 502(a)(3)"). By so concluding, the court has created for Alabama employers and fiduciaries not merely the "potential for conflict in substantive law," but an *actual* conflict of just the sort Congress endeavored so mightily to avoid.

The potential adverse impact of this conflict on fiduciaries and employers is self-evident. Less apparent, but no less real, is the potential adverse impact on plan participants. The "uniformity of decision" that ERISA was designed to foster, 120 Cong. Rec. 29933 (1974) (statement of Sen. Williams), was part of Congress's effort to balance participant protections against the burdens imposed on employers. *See, e.g., Mertens*, 113 S. Ct. at 2071; *Ingersoll-Rand*, 498 U.S. at 144; *Pilot Life Ins. Co. v.*

Dedeaux, 481 U.S. 41, 54 (1987); *Russell*, 473 U.S. at 148 n.17; *Alessi*, 451 U.S. at 515. Congress was concerned that if those burdens were too great, ERISA would "force employers to end their plans or perhaps discourage other employers from beginning them," 120 Cong. Rec. 29209 (1974) (statement of Rep. Collier), contrary to ERISA's fundamental goal of "promot[ing] the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). *See also* S. Rep. No. 127, 93d Cong., 1st Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838 (discussing purposes of ERISA, including controlling costs associated with management of employee benefit plans).

As the Court recently noted, ERISA is "an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests – not all in favor of [participants]." *Mertens*, 113 S. Ct. at 2071. Congress recognized that maintaining an employee benefit plan involves a significant commitment, and that the most efficient way to meet that commitment "is to establish a uniform [benefit] scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987). If, however, an employer is subject to conflicting law, depending on whether suit is brought in state or federal court, differing benefit practices and administrative procedures might be required. "Faced with the difficulty or impossibility of structuring administrative practices according to a set of uniform guidelines, an employer may decide to reduce benefits or simply not pay them at all." *Id.* at 13 (footnote omitted). ERISA's comprehensive "federalization" of employee

benefits, ignored by the court below, was aimed at minimizing this risk.

To be sure, the conflict at issue here involves only additional damages for alleged violations of existing statutory provisions; i.e., the "federal common law" created by the Alabama Supreme Court in this case will not necessarily alter the design or administration of employee benefits plans. But the decision nevertheless implicates the concerns expressed by Congress and the prior decisions of this Court. It is indisputable that the decision below will increase the cost of providing employee benefits; few plaintiffs will bring suit in federal court if they think they may be able to win extracontractual damages from a sympathetic jury in a state court. To offset these additional costs, employers may choose to reduce or discontinue their benefit plans, contrary to Congress's goal, in enacting ERISA, "to improve and encourage the expansion of private [benefit] plans." 120 Cong. Rec. 29928 (1974), 3 Leg. Hist. 4732 (quoted in *Alessi*, 451 U.S. at 516 n.12).[8]

Furthermore, while this decision itself relates only to damages, it establishes a precedent – that state courts

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[8] *See also* 102 Cong. Rec. S15,762 (daily ed. Aug. 22, 1974) (statement of Senator Nelson):

> [Cost is] an important factor in determining whether a pension plan will be adopted. Unduly large increases in cost can impede the progress of the private pension system. For this reason, . . . Congress tried to adopt provisions which strike a balance between providing a meaningful protection for the employees and keeping costs within reasonable limits for employers.

may establish federal common law under ERISA – that threatens to undermine totally the federal uniformity that Congress sought to ensure.[9] Employers may now be subject to suit in state courts across the nation. They will be subject to inconsistent decisions in these courts. And, of course, they may be subject to punitive and compensatory damages.

In *Shaw v. Delta Airlines*, 463 U.S. at 104, the Court observed that "Congress applied the principle of preemption 'in its broadest sense to foreclose *any* non-Federal regulation of employee benefit plans. . . . ' " (quoting 120 Cong. Rec. 29197) (emphasis added). As even the court below recognized, this means that state courts may not regulate employee benefit plans by applying state law. The result is no different, however, if state courts are permitted to create and apply their own federal common law under ERISA.

CONCLUSION

This Court has repeatedly upheld the balance that Congress sought to achieve in ERISA, by refusing to impose burdens on employers not contemplated by the statute, and by confirming the enormous importance of

[9] Tempting though it may be to dismiss the decision below as an aberration, this case marks the second occasion on which the Alabama Supreme Court has concluded that state courts may establish federal common law under ERISA, including allowing extracontractual damages and jury trials in actions under ERISA § 502(a). *See Haywood v. Russell Corp.*, 584 So. 2d 1291 (Ala. 1991).

uniform and consistent federal regulation of employee benefit plans. For the foregoing reasons, the time has come to do so again. The petition for certiorari should be granted and the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

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